

**FILED**

**JUN 25 2013**

Clerk, U.S. District Court  
District Of Montana  
Missoula

**THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**MISSOULA DIVISION**

VICTOR RANDOLPHE TURNER,  
JR. II,

Plaintiff,

vs.

CINDI GRIMM and FRIENDS OF  
JERRY,

Defendants.

Cause No. CV 13-00130-M-DWM-JCL

FINDINGS AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE TO  
DENY MOTION TO PROCEED IN FORMA  
PAUPERIS

Plaintiff Victor Randolphe Turner Jr., II, an inmate confined in Texas, proceeding without counsel, has filed what has been construed as a civil complaint against Cindi Grimm and her company, "Friends of Jerry." (Dkt. 1).

Turner did not pay the \$400.00 filing fee and did not submit an application to proceed in forma pauperis. Because this action is subject to dismissal pursuant to 28 U.S.C. § 1915(g), the Court will not direct Turner to pay the fee or file a

motion for leave to proceed in forma pauperis.

Permission to proceed in forma pauperis is discretionary with the Court.

See 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Turner has filed at least four civil actions which were dismissed as frivolous, malicious, or for failure to state a claim. See *Turner v. Livingston, et al.*, 4:09cv1112 (S.D. Tex. 2009); *Turner v. 268th Dist. Ct., et al.*, 4:09cv1576 (S.D. Tex.), appeal dismissed, No. 09-20424 (5th Cir. Sept. 24, 2009); *Turner v. Fort Bend County Jail, et al.*, 4:09cv1779 (S.D. Tex.), appeal dismissed No. 09-20594 (5th Cir. Dec. 15, 2009); *Turner v. Elliot*, 4:09cv2996 (S.D. Tex. 2009), appeal dismissed No. 09-20839 (5th Cir. Feb. 11, 2010). Turner has been denied permission to proceed in forma pauperis in at least six other federal district court cases based upon this provision. See *Turner v. Thaler*, 4:11cv103 (S.D. Tex. 2011); *Turner v. Quada, et al.*, 4:11cv109 (S.D. Tex. 2011); *Turner v. O'Hara, et al.*, 4:11cv2364 (S.D. Tex. 2011); *Turner v. O'Hara, et al.*, 4:11cv2369 (S.D. Tex. 2011); *Turner v. Thaler*, 4:11cv2370 (S.D. Tex. 2011); and *Turner v. 268th Court*

*District of Fort Bend County, et al.*, 4:12cv1331 (S.D. Tex. 2012).

Turner has exceeded the three “strikes” allowed by the Prison Litigation Reform Act to a prisoner attempting to proceed in forma pauperis in a federal civil lawsuit. As such, he cannot proceed in forma pauperis in the instant case unless he can show that he qualifies for the “imminent danger of serious physical injury” exception of Section 1915(g). Turner is alleging claims of breach of contract regarding a business dealing. Even construed liberally, these allegations do not support a finding of “imminent danger of serious physical injury.”

Ordinarily litigants are given a period of time to pay the \$400.00 filing fee, but Turner should not be allowed to do so given his abusive litigation practices. He should have known he could not submit additional complaints without paying the filing fee or demonstrating imminent danger of serious physical harm.

Turner is not entitled to a ten-day period to object. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

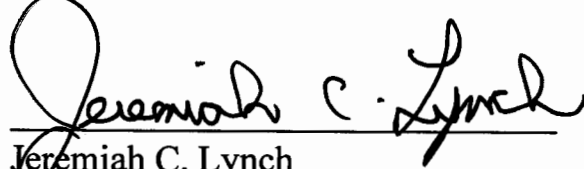
Based upon the foregoing, the Court issues the following:

### **RECOMMENDATION**

Turner should not be allowed to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g). The Clerk of Court should be directed close the case and enter

judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 25th day of June, 2013.

  
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Jeremiah C. Lynch  
United States Magistrate Judge